



PRELIMINARY DRAFT

No. 3444

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 11-8-1-3.1; IC 11-10; IC 33-38-9-11; IC 36-2-21.

Synopsis: County offender fund and offender incentives. Requires the department of correction (department) to: (1) determine the average daily marginal cost of incarcerating an offender; (2) determine the average length of stay for certain Class D felony offenders in the department; and (3) administer an incentive and disincentive program under which counties are rewarded for reducing the number of Class D felony offenders committed to the department. Requires each county to establish a county offender fund. Requires the judicial conference to submit a report to the department detailing the number of Class D felony convictions for each county.

Effective: Upon passage; July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 11-8-1-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.1. "Average daily marginal cost of incarcerating an offender" means the average daily cost to the department to commit one (1) additional offender to the department, as determined under IC 11-10-13-1(b).**

SECTION 2. IC 11-10-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 1. (a)** The department shall develop a methodology for determining the average daily cost of incarcerating an offender.

(b) The department shall develop a methodology for determining the average daily marginal cost of incarcerating an offender. The costs to be considered in determining the average daily marginal cost of incarcerating an offender:

(1) must include the additional expenses of providing food, clothing, and health care to a new offender; and

(2) do not include the costs of new facilities or additional staff.

SECTION 3. IC 11-10-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 16. County Incentives and Disincentives for Class D Felony Offenders

Sec. 1. The department shall administer a local rehabilitation incentive and disincentive program under which counties may:

(1) reduce the number of Class D felony offenders committed to the department; and

(2) maintain fewer Class D felony offender commitments to the department.

Sec. 2. The department shall determine the average length of stay for a Class D felony offender who has an executed sentence of less than one (1) year in the department. This determination must



1 be based on a one (1) year period.

2 Sec. 3. (a) Before September 1, 2012, the department shall
3 establish a baseline average number of Class D felony offenders
4 that each county commits annually to the department based on
5 each county's Class D felony commitments to the department in the
6 2008, 2009, 2010, and 2011 calendar years.

7 (b) The department shall provide a local rehabilitation incentive
8 to each county that commits to the department in one (1) calendar
9 year fewer Class D felony offenders than the baseline average
10 established for that county under subsection (a). Each county that
11 has a reduction in Class D felony commitments for a calendar year
12 is entitled to an incentive based on the reduction in the
13 department's incarceration costs attributable to the county's
14 reduction in Class D felony commitments, as determined according
15 to the formula set forth in subsection (c).

16 (c) Before March 1 each year, the department shall calculate the
17 incentive described in subsection (b) using the following formula:

18 STEP ONE: Subtract the number of Class D felony offenders
19 that a county commits to the department in a calendar year
20 from the baseline average established for that county under
21 subsection (a).

22 STEP TWO: If the STEP ONE remainder is not positive, the
23 incentive amount is zero (0). Otherwise, multiply the number
24 of offenders determined under STEP ONE by the average
25 number of days of the length of stay for a Class D felony
26 offender in the department, as determined under section 2 of
27 this chapter.

28 STEP THREE: Multiply the product determined under STEP
29 TWO by the average daily marginal cost of incarcerating an
30 offender, as determined under IC 11-10-13-1(b).

31 STEP FOUR: Multiply the amount determined under STEP
32 THREE by fifty percent (50%).

33 Sec. 4. (a) The department shall create a disincentive to each
34 county that in one (1) calendar year commits to the department:

35 (1) more than ten (10) more Class D felony offenders than the
36 baseline average established for the county under section 3(a)
37 of this chapter; or

38 (2) more offenders than one hundred and five percent (105%)
39 of the baseline average established for the county under
40 section 3(a) of this chapter;

41 whichever is greater.

42 (b) Before March 1 each year, the department shall calculate the
43 disincentive described in subsection (a) using the following
44 formula:

45 STEP ONE: Subtract the baseline average established for a
46 county under section 3(a) of this chapter from the number of



1 Class D felony offenders that the county commits to the
2 department in a calendar year.

3 **STEP TWO:** If the STEP ONE remainder is ten (10) or less,
4 the disincentive amount is zero (0). Otherwise, multiply the
5 number of offenders determined under STEP ONE by the
6 average number of days of the length of stay for a Class D
7 felony offender in the department, as determined under
8 section 2 of this chapter.

9 **STEP THREE:** Multiply the product determined under STEP
10 TWO by the average daily marginal cost of incarcerating an
11 offender, as determined under IC 11-10-13-1(b).

12 **STEP FOUR:** Multiply the product determined under STEP
13 THREE by fifty percent (50%).

14 **Sec. 5.** The department shall withhold the amount of the
15 disincentive calculated for a county for a particular year under
16 section 4 of this chapter from the amount of money the department
17 is otherwise required to deposit in a county's misdemeanor fund
18 under IC 11-12-6-13 before September 1 of that year.

19 **Sec. 6. (a)** Before September 1, 2012, the department, using the
20 report issued by the Indiana judicial center under IC 33-38-9-11
21 for calendar year 2011 and the number of Class D felony offender
22 commitments made to the department in calendar year 2011, shall
23 determine the number of offenders convicted in calendar year 2011
24 of Class D felonies in all counties and, of that number, the
25 percentage of Class D felony offenders who were committed to the
26 department. The statewide average percentage calculated under
27 this subsection is the baseline average for the purposes of this
28 section.

29 **(b)** Each year after 2011, the department shall provide a local
30 rehabilitation incentive to each county that does not commit a
31 larger percentage of its Class D felony offenders to the department
32 than the baseline average percentage determined under subsection
33 (a). A county's eligibility for a local rehabilitation incentive under
34 this section must be determined according to the formula set forth
35 in subsection (c).

36 **(c)** Before March 1 of each year, the department shall calculate
37 a county's eligibility for the incentive described in subsection (b)
38 using the following formula:

39 **STEP ONE:** The department shall determine for a county the
40 number of Class D felony offenders that the county committed
41 to the department in the previous calendar year.

42 **STEP TWO:** The department shall determine the percentage
43 of Class D felony offenders that the county committed to the
44 department in the previous calendar year by dividing the
45 STEP ONE number by the total number of Class D felony
46 convictions in that county in the previous calendar year, as



1 stated in the report submitted by the Indiana judicial center
2 under IC 33-38-9-11.

3 **STEP THREE:** If the county's percentage of Class D felony
4 offenders committed to the department, as calculated under
5 **STEP TWO**, is lower than the baseline average percentage
6 determined under subsection (a), the county is eligible for an
7 incentive described in subsection (d).

8 (d) The incentive under this section shall be paid from funds
9 remaining from the marginal savings realized by the department
10 as a result of the counties committing fewer Class D felony
11 offenders to the department after the incentives have been
12 distributed under section 3 of this chapter. The department may
13 adopt rules under IC 4-22-2 to distribute the remaining funds to
14 eligible counties equitably, with the amount of each county's
15 incentive being proportional to the extent to which savings realized
16 by the department are attributable to the county's reduction in the
17 percentage of its Class D felony offenders that the county commits
18 to the department.

19 **Sec. 7. (a)** Before June 1 each year, the local incentives
20 calculated under sections 3 and 6 of this chapter shall be provided
21 from the marginal savings realized by the department as a result
22 of the counties committing fewer Class D felony offenders to the
23 department and shall be distributed to a county's county offender
24 fund under IC 36-2-21. The county fiscal body shall redistribute
25 the incentives as set forth in IC 36-2-21-1.

26 (b) If a county has a local community corrections advisory
27 board, the local community corrections advisory board shall make
28 a recommendation to the county's fiscal body regarding how local
29 incentive funds should be distributed.

30 **Sec. 8.** In making the calculations required under this chapter,
31 the department may not consider a Class D felony offender:

- 32 (1) whose probation has been revoked;
- 33 (2) whose participation in a community corrections program
- 34 has been terminated as a result of a violation of program
- 35 requirements;
- 36 (3) whose participation in a problem solving court program
- 37 has been terminated as a result of a violation of program
- 38 requirements; or
- 39 (4) who is committed temporarily to the department under
- 40 IC 35-33-11-1.

41 **Sec. 9.** This chapter does not affect the rate that the department
42 pays for a jail to house an offender under IC 35-33-11.

43 **Sec. 10.** The department may adopt rules under IC 4-22-2 to
44 implement this chapter.

45 **SECTION 4.** IC 33-38-9-11 IS ADDED TO THE INDIANA CODE
46 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]: **Sec. 11. Not later than May 1 of each year, the Indiana judicial center shall submit to the department of correction a report detailing the number of offenders convicted of Class D felonies in each county in the previous calendar year.**

SECTION 5. IC 36-2-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 21. County Offender Fund

Sec. 1. Each county shall establish, by resolution, a county offender fund to redistribute incentives received under IC 11-10-16 to:

- (1) programs that defray the expense of housing an offender in jail;**
- (2) probation programs;**
- (3) work release programs;**
- (4) community corrections programs;**
- (5) problem solving courts; and**
- (6) substance abuse treatment programs.**

Sec. 2. Money in a county offender fund established under section 1 of this chapter may be spent only under an appropriation from the county fiscal body.

SECTION 6. An emergency is declared for this act.

